

### **REMARKS**

This amendment responds to the office action dated January 10, 2007.

The Examiner rejected claims 27-29 under 35 U.S.C. § 103(a) as being obvious in view of the combination of Loveland, U.S. Patent No. 6,437 in view of Yu, U.S. Patent No. 5,434,621.

Independent claim 27, from which the remaining claims each respectively depend, recites the limitations of “monitoring a level of confidence that said tracking system is tracking a target” and “increasing magnification of an image visible to said operator in response to a decrease in said level of confidence.” The Examiner alleges that Loveland discloses the first of these two limitations, Yu discloses the second, and that one of ordinary skill in the art would modify Loveland using the teachings of Yu so as to arrive at the limitations of claim 27. The latter two of these contentions are incorrect.

First, though Loveland discloses monitoring a level of confidence that a target is being tracked, Loveland also discloses that if the confidence decreases, the magnification should also decrease, i.e. Loveland *teaches away* from the claimed invention, a fact that alone renders claim 27 non-obvious over the cited prior art. The Examiner attempts to gloss over this disclosure in Loveland by simply asserting that the reference discloses “altering” the magnification of an image as the confidence that an object is being tracked decreases. The unavoidable fact is, however, that Loveland specifically teaches *increasing* the magnification in such an event, while claim 27 requires precisely the opposite.

Moreover, the Examiner’s assertion that Yu teaches increasing the magnification of a lens in response to a decrease in confidence that an object is being tracked is also false. Yu discloses a photographic apparatus used by photographers to maintain the size of a subject in a picture frame, even as the target moves toward or away from the photographer. To achieve this desired result, Yu uses the auto-focus (AF) motor of a camera (still or video) in conjunction with data from the zoom level to calculate the distance to the subject once the photographer initially focuses on the subject. Specifically, knowing the AF motor position (what Yu calls the AF count) and the current magnification level, the distance to the in-focus plane, as well as the depth

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of field can be calculated. As the AF motor continually adjusts to maintain focus on a moving subject, the change in distance from the original position can be calculated, and the magnification level automatically increased or decreased so as to maintain the size of the subject in the field of view of the lens.

With this in mind, the Examiner's rejection is easily dispensed with. The system of Yu assumes (and in fact only works if) the camera's AF system is *constantly* tracking the target. In other words, since Yu always presumes that the target is in fact, being tracked, Yu cannot be considered to be monitoring a "confidence level" that a target is being tracked and adjusting the magnification accordingly. Rather, the change in magnification is in response to the detected movement (towards or away from the camera) of an object *being* tracked, not any uncertainty as to *whether* the target is being tracked.

The Examiner seems to, at least implicitly, recognize this issue, arguing that the "confidence level" with respect to Yu is "the comparison of the focus count which indicates that the object is moving away or the confidence level is decreasing." Even setting aside the question of whether an "object moving away" can be considered a "confidence level", it is certainly not the confidence level as taught by Loveland. For the Examiner's rejection to make sense, the term "confidence level" must be read consistently between the primary and secondary reference. The Examiner's rejection does not do this, instead trying to redefine the term "confidence level" midstream so as to cobble together two disparate techniques so as to ostensibly arrive at the claimed invention. An obviousness rejection cannot be based on this type of inconsistency.

For the foregoing reasons, claims 27-29 patentably distinguish over the cited prior art, and the applicant respectfully requests that claims 27-29 be allowed.

Respectfully submitted,



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